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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Hearman Lee Newton,

10 Plaintiff,

11 v.

12 City of Phoenix, et al.,

13 Defendants.

14 No. CV 13-1874-PHX-DGC (MEA)

ORDER

15 Plaintiff Hearman Lee Newton filed this *pro se* civil rights action claiming
16 excessive force in the course of his arrest. (Doc. 1.) On May 13, 2014, Plaintiff filed a
17 Motion for a Preliminary Injunction that seeks no specific relief. (Doc. 20.) On the same
18 day, he filed a Motion for Reconsideration of the Magistrate's Judge's Order denying
19 appointment of counsel. (Doc. 21.) Plaintiff also filed Objections to the Magistrate
20 Judge's Report and Recommendation now pending before this Court. (Doc. 22; ref. Doc.
21 18.) Defendant opposes the Motion for a Preliminary injunction. (Doc. 23.) The Court
22 will deny the Motion for a Preliminary injunction.

23 A preliminary injunction is an extraordinary and drastic remedy and “one that
24 should not be granted unless the movant, by a clear showing, carries the burden of
25 persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A
26 C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948, pp. 129-130
27 (2d ed. 1995)). An injunction may be granted only where the movant shows that “he is
28 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence

1 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is
 2 in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
 3 *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).
 4 The movant has the burden of proof on each element of the test. *Environmental Council*
 5 *of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000).

6 Plaintiff claims that he is going to serve prison time at the Arizona Department of
 7 Corrections (ADC) and that there are no law libraries at ADC where he can research
 8 issues and litigate his case. (Doc. 20 at 2.) As Defendant observes, it is unclear what
 9 Plaintiff is seeking. If he is seeking a stay of his transfer, Defendant notes that neither the
 10 Maricopa County Sheriff’s Office nor ADC are parties here and cannot be enjoined in
 11 this lawsuit. (Doc. 23 at 2, citing *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395
 12 U.S. 100, 110 (1969) (“one is not bound by a judgment in personam resulting from
 13 litigation in which he is not designated as a party or to which he has not been made a
 14 party by service of process”.) Defendant Officer Myers does not have custody of
 15 Plaintiff and has no control over the Fourth Avenue Jail or ADC. (*Id.*)

16 To the extent that the Court can interpret Plaintiff’s Motion for a Preliminary
 17 Injunction as one related to the Motion for Reconsideration and denial of counsel, it will
 18 be denied. Plaintiff is speculating that ADC law libraries are inadequate for the purposes
 19 of his litigation. Mere “[s]peculative injury does not constitute irreparable harm
 20 sufficient to warrant granting a preliminary injunction.” *Caribbean Marine Services Co.,*
 21 *Inc. v. Baldrige*, 844 F. 2d 668, 674-675 (9th Cir. 1988) (emphasis added). To meet the
 22 “irreparable harm” requirement, a plaintiff must do more than merely allege imminent
 23 harm; he must demonstrate it. *Id.* at 674. Plaintiff fails to establish that he will be
 24 irreparably harmed by failure to immediately appoint counsel. The Court notes that the
 25 Motion to Dismiss is fully briefed and that Plaintiff has already filed his objections to the
 26 pending Report and Recommendation. (Docs. 8, 11, 15, 22.) The Motion for
 27 Reconsideration will be ruled on in due course.
 28

IT IS ORDERED that the reference to the Magistrate is withdrawn as to Plaintiff's Motion for a Preliminary Injunction (Doc. 20) and the Motion is denied.

Dated this 10th day of June, 2014.

Daniel G. Campbell

David G. Campbell
United States District Judge